



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 18, 2017

Mr. Dan Junell
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR2017-16022

Dear Mr. Junell:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 667925 (TRS Ref. # *Bloomberg News* 17-1).

The Teacher Retirement System of Texas (the "system") received a request for information pertaining to the system's direct purchase and holding of restricted securities.¹ You claim the submitted information is excepted from disclosure under sections 552.104 and 552.143 of the Government Code.² You also state, and provide documentation showing, you notified Bridgewater Associates, L.P. ("Bridgewater") and Valuation Research Corporation ("VRC") of the request for information and of their rights to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits

¹You state the system sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

²Although you also raise sections 552.101 and 552.110 of the Government Code, you make no arguments regarding these provisions. Therefore, we assume you have withdrawn your claim that these sections apply to the submitted information. *See* Gov't Code §§ 552.301, .302

governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Bridgewater and VRC. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the information at issue may be subject to section 552.0225 of the Government Code. Section 552.0225(b) provides as follows:

The following categories of information held by a governmental body relating to its investments are public information and not excepted from disclosure under [the Act]:

- (1) the name of any fund or investment entity the governmental body is or has invested in;
- (2) the date that a fund or investment entity described by Subdivision (1) was established;
- (3) each date the governmental body invested in a fund or investment entity described by Subdivision (1);
- (4) the amount of money, expressed in dollars, the governmental body has committed to a fund or investment entity;
- (5) the amount of money, expressed in dollars, the governmental body is investing or has invested in any fund or investment entity;
- (6) the total amount of money, expressed in dollars, the governmental body received from any fund or investment entity in connection with an investment;
- (7) the internal rate of return or other standard used by a governmental body in connection with each fund or investment entity it is or has invested in and the date on which the return or other standard was calculated;
- (8) the remaining value of any fund or investment entity the governmental body is or has invested in;
- (9) the total amount of fees, including expenses, charges, and other compensation, assessed against the governmental body by, or paid by the governmental body to, any fund or investment entity or principal of any fund or investment entity in which the governmental body is or has invested;

(10) the names of the principals responsible for managing any fund or investment entity in which the governmental body is or has invested;

(11) each recusal filed by a member of the governing board in connection with a deliberation or action of the governmental body relating to an investment;

(12) a description of all of the types of businesses a governmental body is or has invested in through a fund or investment entity;

(13) the minutes and audio or video recordings of each open portion of a meeting of the governmental body at which an item described by this subsection was discussed;

(14) the governmental body's percentage ownership interest in a fund or investment entity the governmental body is or has invested in;

(15) any annual ethics disclosure report submitted to the governmental body by a fund or investment entity the governmental body is or has invested in; and

(16) the cash-on-cash return realized by the governmental body for a fund or investment entity the governmental body is or has invested in.

Gov't Code § 552.0225(b). The system, Bridgewater, and VRC argue the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.143 of the Government Code. However, the exceptions to disclosure found in the Act do not apply to information made public by section 552.0225. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the system must release the types of information enumerated in section 552.0225(b) of the Government Code.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. This exception protects a governmental body's interests in competitive bidding and certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the "competitive advantage" aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body's legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body's

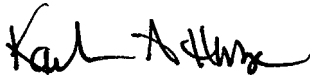
demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

The system argues release of the information at issue would harm its interests in a competitive situation. You inform us the system “has specific marketplace interests in the submitted information because it is constitutionally and statutorily responsible for the investment of billions of dollars of trust assets for the benefit of its participants.” You assert release of the remaining information would reveal to competitors “critically sensitive due diligence, financial, performance, and proprietary information concerning investment strategy and valuation that they could use to gain an advantage in the hedge fund and risk-parity fund markets.” Based on these representations and our review, we find the system has demonstrated it has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. Further, we find you have demonstrated release of the information at issue would cause specific harm to the system’s marketplace interests. We therefore conclude the system may withhold the remaining information under section 552.104 of the Government Code.³

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kaelan A. Henze
Attorney
Open Records Division

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³As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Ref: ID# 667925

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)